

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 25040 of 2006(E)

PETITIONER:

**B.SUNILKUMAR, ADVOCATE,
DISTRICT GOVERNMENT PLEADER & PUBLIC PROSECUTOR,
KOLLAM.**

BY ADV. SRI.V.GIRI.

RESPONDENTS:

**1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, LAW (INSPECTION WING), DEPARTMENT,
SECRETARIAT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**

**2. DISTRICT COLLECTOR,
KOLLAM.**

***ADDL.R3. P.B. SIVAN, PANTHADIYIL,
PADINJATTAKARA,
THEVALAKKARA.**

***IS IMPEADED AS PER ORDER DATED 21/12/2006
IN I.A. 17688/2006.**

**BY GOVERNMENT PLEADER SMT. K.L. LAKSHMI RANI,
SRI.C.RAJENDRAN
SRI.M.K.DAMODARAN (SR.) FOR R3,
SRI.P.K.VIJAYAMOHANAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/06/2007, ALONG WITH W.P.(C). NO. 34531 OF 2006, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C). NO.25040/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE GOVERNMENT ORDER DTD. 16/08/2005, G.O. (MS) 191/05/LAW.

EXT.P.2: COPY OF THE COVERING LETTER ISSUED BY THE DISTRICT COLLECTOR, KOLLAM TO THE SECRETARY, BAR ASSOCIATION, KOLLAM DT. 10/08/06 ALONGWITH NOTICE.

EXT.P.3: COPY OF THE ORDER DTD. 15/12/2006 BEARING NO. GO (MS) NO. 509/06/LAW.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE NOTICE.

EXT.R3.B: COPY OF THE LETTER.

EXT.R3.C: COPY OF THE GAZETTE.

EXT.R3.D: COPY OF THE APPOINTMENT ORDER.

//TRUE COPY//

prv.

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.25040 & 34531 of 2006

Dated this the 8th June, 2007.

JUDGMENT

W.P.(C) No.25040 of 2006

The petitioner is a lawyer practising at, Kollam. He was a District Government Pleader and Public Prosecutor. Apprehending termination of his appointment, this writ petition was filed.

2. The learned Government Pleader submits that the service of the petitioner has already been terminated and the Additional 3rd respondent has been appointed in his place.

3. The petitioner submits that the appointment of a District Government Pleader cannot be treated as engagement of a lawyer by a litigant. A public element is involved in it and, therefore, his termination can only be made on valid grounds. So, he challenges the termination of his service.

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4. The point raised by the petitioner is covered against him by the decision reported in **Mohammed Ashraf v. State of Kerala (1991 (2) KLT 818)**. I feel that the facts of this case are identical to the facts of that case. So, the challenge against the termination of service of the petitioner is repelled. But, if the petitioner has suffered any damages by the termination, he will be free to work out his remedies before the competent civil court.

5. The petitioner has got a case that the 3rd respondent, who has been appointed in his place, has been found not fit by the competent District Judge. But, the Government have taken the view that such a comment from the District Judge is not sufficient to deny appointment to a person, who has been found fit by the District Collector and in whom the Government have confidence. The relevant portion of the counter affidavit reads as follows:

"6. On a joint reading of the above Clauses it can be seen that the District Collector can forward the name of the Advocates unless his name has been

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specifically disapproved by the District and Sessions Judge on specific grounds within 10 days from the date of receipt of the same by him. In other words, the District Collector need exclude the name of an Advocate, whom he had found fit to be appointed as District Government Pleader, only if the name of that Advocate is specifically disapproved by the District and Sessions Judge on specific grounds. The mere endorsement of 'not fit and competent' will not amount to 'specific disapproval on specific grounds'. Unless the District and Sessions Judge specifically disapprove the name of any Advocate stating specific grounds, within the time limit prescribed by the rules, the District Collector can very well forward the name of that Advocate to be considered for appointment as District Government Pleader. In this case, though the District Judge reported that those persons are not fit and competent, it is not reclaimed as for what reasons it is reported so. The Government is also not aware of the interview conducted and the results therein. It is therefore, most respectfully submitted that the Government is fully justified in appointing Sri P.B.Sivan who was found to be more

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competent and in whom the Government is having more confidence."

In my opinion, the view taken by the Government is a plausible view. The District and Sessions Judge has failed to give his reasons for the views expressed by him against the third respondent. Further, the petitioner is not concerned whether the person, chosen for appointment in his place, is qualified or not, because his engagement has already been terminated. This writ petition, therefore, fails and is dismissed.

W.P.(C) No.34531 of 2006

In view of decision in W.P.(C)25040 of 2006, this writ petition, which is also relating to the appointment of District Government Pleader, is dismissed.

**K. BALAKRISHNAN NAIR,
JUDGE.**

vav.